



REDACTED – FOR PUBLIC INSPECTION

December 6, 2001

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12 Street, SW
Washington, DC 20554

Re: Ex Parte – Application by BellSouth Corporation et al. for Authorization to Provide In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 01-277

Dear Ms. Salas:

Birch Telecom of the South, Inc. files this *ex parte* letter to respond to the continued misrepresentations made by BellSouth in its November 13 Reply Brief and November 30 *ex parte* filed with this Commission.

On November 13 and November 30, 2001, BellSouth submitted its reply brief and an *ex parte*, respectfully, that addressed a number of issues Birch Telecom has raised in opposition to BellSouth's 271 application. Birch provides this *ex parte* response to "correct the record" from Birch's perspective and to point out to the Commission numerous instances where BellSouth has misrepresented facts before this Commission.

After a review of BellSouth's filing in this proceeding, it has become abundantly clear to Birch, and presumably this Commission, that in order to accomplish interconnection with BellSouth, a CLEC must escalate to the highest levels within BellSouth or effectively engage in the regulatory battlefield to have any hope of improvement or change. BellSouth strongly supports this conclusion throughout its filings, as referenced herein. This controlling, monopolistic, corporate mentality impedes competition in the BellSouth territory.

Flow Through Restatement

Only after a discussion between Birch and BellSouth near the end of September was BellSouth tipped off to the possible flow-through calculation issues. While Birch cannot claim as a matter of fact that BellSouth only acted on information provided by Birch, the timeline below provides evidence that it may have played a significant factor:

- August 30 - Birch submits inquiry to BellSouth pertaining to possible flow through reporting issues
- Last week of September – Birch inquires about the status of its August 30 request. BellSouth representative indicates analysis is complete but formal response is being reviewed in the legal department. BellSouth representative verbally explains “Dummy FOC” issue. Birch representative states belief that Birch does not cancel the volume of orders involved and that other reporting issues must be present. BellSouth representative indicates further research is necessary (within BellSouth).
- October 2 - BellSouth files instant application with the FCC. “Planned Manual Fallout” issue is vaguely addressed and BellSouth states revised flow-through data will be provided.
- October 5 – Birch receives BellSouth response to August 30 inquiry only outlining “Dummy FOC” issue.
- October 15 – Birch files its *ex parte* presentation outlining large flow through discrepancy for July results.
- October 15 – BellSouth files revised flow-through detail reports with Georgia PSC (only addressing the “Planned Manual Fallout” issue).
- October 22 – Birch files its initial comments in this proceeding outlining in detail the flow-through discrepancy (“Planned Manual Fallout” issue did not materially change Birch’s flow through results, thus a large discrepancy was still present).
- October 25 – BellSouth files an *ex parte* presentation outlining the “Planned Manual Fallout” and “TSIGNOUT” issues.
- November 1 – BellSouth files its second revised flow through reports for July with the Georgia PSC. The November 1 results address, for the first time, the issue previously raised by Birch.
- November 13 – BellSouth claims in its reply brief that correction of the flow through measurement was only due to BellSouth’s commitment to provide correct data. Specifically, BellSouth stated:

“And, again, it was BellSouth that – through its own vigilance – recognized the need for these corrections and brought them to the attention of all interested parties. Far from undermining this Commission’s faith in BellSouth’s data, this episode merely underscores BellSouth’s commitment to accurate and reliable data.” *BellSouth Reply Brief at page 16.*

The dates and events that transpired prior to BellSouth’s restatement do not support BellSouth’s finding that the data was restated “through its own vigilance.” A more logical

conclusion would be that BellSouth realized that CLECs were proving, through the use of the BellSouth produced raw data, the flow through results to be incorrect. In order to resolve the issue present before the FCC, BellSouth creates a proactive spin on the data to cover the underlying truth.

BellSouth affiant, Alphonso J. Varner, in an effort to support the BellSouth spin placed on the issue, states the “TSIGNOUT” issue should have only changed the flow-through results minimally.¹ However, the reported data shows a large increase in the UNE aggregate results from June (at the time the July reports were generated June results were 78.33%) to July (originally reported at 90%). It is curious that BellSouth did not realize the bad coding at the time the new data was published. Surely, when the UNE aggregate results increase almost 12% from one month to the next, and only a minimal increase was expected, due diligence would demand a re-check of any new code implemented. Conversely, BellSouth’s supposed due diligence did not occur until October – after CLECs presented various data that concluded the flow through results to be inaccurate.

Service Order Accuracy

Birch raised serious customer impacting service order accuracy issues with respect to orders which Birch submits electronically, but which BellSouth processes manually. In these instances, BellSouth representatives must re-type information Birch provides electronically on Local Service Requests into the BellSouth legacy ordering systems. At issue in this application are errors that BellSouth introduces during this process, i.e. the BellSouth representatives incorrectly enter CLEC orders causing impacts to the CLEC, the end user, or both. In its reply comments, Birch provided many detailed examples of the errors BellSouth introduces to Birch orders and the impact on Birch to resolve those issues. In BellSouth’s reply comments and subsequent *ex parte* on November 30, BellSouth attempts to belittle Birch’s claims as non-customer impacting and insignificant when compared to total Birch order volumes. BellSouth unfortunately again misrepresents the facts -- badly.

In its reply comments, BellSouth provides confidential Birch order volumes to demonstrate an insignificance of the error identified by Birch. Specifically, the Joint Reply Affidavit of Mr. Ken L. Ainsworth, Mr. William N. Stacy, and Mr. Varner states that of the ****REDACTED**** orders Birch placed in September, Birch made ****REDACTED**** calls to the LCSC complaining of features being left off the order. *Ainsworth, Stacy, Varner Reply Affidavit at ¶ 61*. This statement is again very troubling for several different reasons. Most notably, Birch only submitted ****REDACTED**** region wide LSRs (per the flow through report which tracks every PON/Version combination as a separate transaction) in the month of September. The ****REDACTED**** also includes every LSR that was rejected, so the actual Birch order volume that resulted in a provisioned order is well less than 50% of the volume stated by BellSouth. The above statement also suggests that BellSouth tracks and tallies calls from CLECs, and while BellSouth did not identify its source for this information, the assertion that BellSouth tracks every CLEC phone call and determines the reason for the call is extremely far-

¹ Mr. Varner concludes that the 250,000 service orders issued would have only increased by 1,600 as a result of the TSIGNOUT issue. See Varner Reply Affidavit at ¶ 35.

fetched. If BellSouth does indeed track CLEC calls in this manner, Birch provides a simple suggestion: **free this extra time and start ensuring CLEC orders are provisioned accurately.** BellSouth's analysis also completely overlooks the BellSouth implemented "Hitops" e-mail process that Birch also utilizes to correct BellSouth mistakes. As stated in the Birch reply comments and reiterated in this *ex parte*, Birch continues to experience an unacceptable error rate on manually handled orders.

In the November 30 *ex parte*, BellSouth rationalizes that over 50% the Birch service order accuracy examples provided in the reply comments are not customer impacting. This statement again shows the true mindset of BellSouth and again totally disregards the reality of the possible impacts to the end user. The two examples that BellSouth deemed "non customer impacting" errors include directory listing errors and the omission of the 900 block feature.

- Directory listing errors do not affect the dial tone provided to Birch's small business end user, but the directory listing is **very** important to that small business. Any mistake to a small business' listing could possibly put the end user out of business or other harms. Birch goes to great lengths to isolate its end users from these errors that undoubtedly would harm Birch and Birch's end user, if not corrected.
- 900 block feature errors are also customer and Birch impacting. Birch proactively restricts outbound 900 calls for end users. The feature, which is added at conversion to Birch service, is not much different, from an ordering perspective, than ordering call waiting or caller id. When BellSouth does not provision the service that Birch properly orders and pays for, Birch does not deliver a service it has communicated to its end user. The omission of the service leads to possible unwanted 900 charges and ultimately 900 disputes – disputes Birch has tried to proactively avoid. The resulting complications only lead to more expenses and provisioning obstacles to Birch because of BellSouth's failure to correctly fulfill a simple request.

Also in the November 30 *ex parte*, BellSouth makes an outrageous claim that Birch did not escalate service order accuracy issues with its Account Team until October 31, 2001.² While it is apparent the only way any resolution will ever occur with BellSouth is by escalation, Birch has raised the service order accuracy issue with its Account Team numerous times prior to October 31- as far back as April 2001.³ Specifically, BellSouth's Account Team Vice President, Director, and Manager visited Birch's Kansas City operations on May 25, 2001. During that visit, Birch presented a "Top 10" issues list regarding operations between the two companies. The third item on Birch's list was Service Order/LCSC Accuracy Reporting. In addition, Birch also had numerous contacts with BellSouth Account Team members regarding specific re-

² In fact, Birch publicly addressed its concerns with BellSouth's service order accuracy problem in its initial comments before the Georgia Public Service Commission in the state 271 proceeding. (*Comments of Birch Telecom of the South, Inc.* Docket No. 6863-U, May 31, 2001, at pp. 10-11).

³ See electronic mail transmission of Birch's Carrier Relations Manager for BellSouth, Lacie Hamlin, to Darryl Washington, then BellSouth Account Manager assigned to Birch, on April 17, 2001 (Attachment 1). The Commission should note the "Top 10" issues list forwarded to Birch's BellSouth Account Team includes many, if not all, of the same issues raised by commenters in this proceeding – most of which have seen little, if any improvement.

occurring service order errors – including the 900 block feature listed above. Unfortunately, all Birch efforts have not affected BellSouth change, as the errors persist.

In Birch's initial comments, Birch commented on the fact that service order accuracy errors or the effects of those errors were not captured in other BellSouth performance measurements. In BellSouth's reply comments, BellSouth provides one witness that agrees with Birch's assessment. Specifically, Mr. Ainsworth, at ¶ 31 of his Reply Affidavit, states:

Birch complains that when BellSouth corrects a service order, it is not included in the trouble within 30 days measures. Birch Comments at 11-12. **While true**, this is the identical process used for BellSouth retail operations unit. If an item is left off of a service order, and a CLEC calls to open a trouble ticket, the matter will be referred to the LCSC for the issuance of a new service order adding the item to the account. This is the most efficient way to correct the end user's service and properly update the CLEC records to reflect the change to the customer's service record.

Emphasis added.

Interestingly enough, in Mr. Ainsworth's Joint Reply Affidavit with Mr. Varner and Mr. Stacy, BellSouth claims that service order errors would be captured in other performance measurements – specifically the trouble within 30 days measure. Paragraph 51 of the joint affiants' testimony states:

Finally, based on the record in this proceeding, there is no reason to believe that BellSouth's performance is impacting competition in any significant way. Downstream measures like "Invoice Accuracy" and "Percent Provisioning Troubles within 30 Days" show strong performance; if service order accuracy were a problem, these two measures would reflect its impact. They do not.

Again, BellSouth misrepresents the facts before this Commission. Again, it is clear that BellSouth cannot get its story straight. The same BellSouth witness, Mr. Ainsworth, makes contrary statements in two separate reply affidavits, filed simultaneously. Either the service order accuracy errors are captured in the "Percent Troubles within 30 Days" measurement or they are not. Birch submits that its track record for truthfulness before this Commission transcends BellSouth's. Therefore, the Commission should not be confused by BellSouth's contrary positions on this issue, but rather recognize that BellSouth's prevalent service order accuracy error problem is not captured in the trouble within 30 days measurement, as Birch has maintained throughout its analysis.

Finally, BellSouth claims in the November 30 *ex parte* that Birch's current experience with BellSouth service order accuracy errors (28%) is "significantly lower" than Birch's experience with Southwestern Bell service order accuracy (36%) at the time of Southwestern Bell's Texas 271 approval. While 8% is not a huge difference, there are key differences between Southwestern Bell (a year and a half ago) and BellSouth today. First, Southwestern Bell's OSS was flowing through approximately 90% of Birch LSRs that were designed to flow through. BellSouth's OSS currently flows through approximately 65% of Birch LSRs that are designed to

flow through. The result is that BellSouth manually handles a higher percentage of Birch orders with a similar error rate.⁴

Change Control / OSS Issues

Birch has outlined various OSS and Change Control issues in its initial and reply comments. BellSouth further explained, in the November 30 *ex parte*, the internal detail surrounding one of the issues Birch raised. The “Double FOC” issue (instances where Birch received multiple FOC responses from BellSouth that contained changes in due dates) was described by BellSouth to be related to due date calculation issues resulting from several failed attempts to implement parity access to due dates. In the *ex parte*, BellSouth itself provides concrete examples of failure to adequately test and implement changes to their OSS. BellSouth claims that the presence of “hard coding” is to blame for the due date calculation implementation failure of June 2, 2001. Any sort of adequate testing would have easily uncovered “hard coding” errors that affects both resale and UNE-P orders (the large majority of CLEC orders). The remainder of BellSouth’s attempts to fix the underlying problems still did not resolve the issue. In fact today, BellSouth still utilizes a manual workaround process. BellSouth’s statement that “this and all other known due date calculation issues will be implemented by February 2002” is yet another paper promise to fix release problems from almost six months ago. These actions again beg the question: would BellSouth retail have this many problems with a release activity without resolution for six months?

The due date calculation failure along with the July 28 release (Pending Service Order information was omitted from the new Customer Service Record query, discussed in Birch’s initial comments) both resulted in BellSouth release defects. These instances clearly show two concrete examples of BellSouth’s failure to adequately test, implement, and resolve issues as they relate to Change Control releases. Both of these failures occurred during the timeframe relied upon for this instant application and both are still unresolved.

Another issue raised by commenters in the opposition of the application involves the integration of preorder and order information. In the November 30 *ex parte*, BellSouth identified Birch as a CLEC that has successfully integrated TAG preordering with TAG ordering. While true on a limited set of preorder activities, Birch does not benefit greatly from current integration. Birch, like most other CLECs, will wait until fully parsed CSRs are available in January 2002 to possibly benefit from full integration. Birch believes the best proof of full integration will be provided when BellSouth itself implements the functionality in RoboTAG.⁵

⁴ In addition, Birch’s Texas service order accuracy complaint/*ex parte* likely did not influence the Commission’s decision for that application. Birch’s thirteenth hour *ex parte* was not filed until June 27, 2000. The Commission granted Southwestern Bell 271 relief on June 30, 2000. Any conclusion drawn that this Commission approved Southwestern Bell’s application, while also fully considering the merits of Birch’s *ex parte*, is false.

⁵ RoboTAG is developed and upgraded by BellSouth and is sold to CLECs for use outside of any §251/252 obligations.

For the reasons discussed herein, Birch urges this Commission to seriously consider BellSouth's compliance with Checklist Item Number 2 and the truthfulness of the representations made by BellSouth during the pendency of the current application. Birch believes the Commission should make its ultimate determination regarding 271 relief for BellSouth only after carefully considering the issues presented herein.

Sincerely,

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Vice President of Regulatory & Carrier Relations

cc: Jessica Rosenworcel (FCC, Room 5-C221)
Renee Crittendon (FCC, Room 5-C345)